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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/065,326 | 10/03/2002 | Steven Curtis Zicker | 7017 | 9314 |

23909 7590 01/03/2007
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| EXAMINER |
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KIM, JENNIFER M

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| ART UNIT | PAPER NUMBER |
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1617

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 01/03/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/065,326

Applicant(s)

ZICKER ET AL.

Examiner

Jennifer Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In view of the remand from the Board of Patent Appeals and Interferences September 28, 2006, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ishihara et al. (U.S. Patent No. 6,297,280 B1) of record.

Ishihara et al. teach a composition for suppressing behavior problems of pets comprising high unsaturated fatty acids. (abstract). Ishihara et al. illustrates administration of powder composition comprising 5% DHA to cats exhibiting behavior problems. (column 7, Examples 2, BB, GG and HH). Ishihara et al. illustrates administration of composition comprising 5% DHA to dogs average age of 1.7 years with behavior problems associated with heatstroke. (Column 8, example 3, BBB, GGG and HHH).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishihara et al. (U.S. Patent No. 6,297,280 B1) of record.

Ishihara et al. teach a composition for suppressing behavior problems of pets comprising high unsaturated fatty acids. (abstract). Ishihara et al. illustrates administration of powder composition comprising 5% DHA to cats exhibiting behavior problems. (column 7, Examples 2, BB, GG and HH). Ishihara et al. illustrates administration of composition comprising 5% DHA to dogs average age of 1.7 years with behavior problems associated with heatstroke. (Column 8, example 3, BBB, GGG and HHH). Ishihara et al. teaches that the high unsaturated fatty acids refers EPA as

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well as DHA. (column 3, lines 1-6). Ishihara et al. teach that the DHA composition can be formulated with of EPA. (column 13, claim 1).

Ishihara do not illustrate the administration of the composition with EPA.

It would have been obvious to one of ordinary skill in the art to modify the illustrated DHA composition of Ishihara with EPA because Ishihara teaches the composition for suppressing behavior problems of pets comprising high unsaturated fatty acids of DHA can be in a mixture with EPA. One would have been motivated to administer illustrated DHA composition in a mixture with EPA in order to provide variety of high unsaturated fatty acids in a single composition that are also effective to influence the behavior of pets as taught by Ishihara. There is a reasonable expectation of successfully influencing the behavior of the animals by employment of the mixtures of DHA and EPA in the amount taught by Ishihara because Ishihara teaches that unsaturated fatty acids are effective and Ishihara illustrated the effectiveness with the composition comprising 5% DHA and also teach that the composition can be in a mixture of EPA.

Claims 1- 7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davenport et al. (A) (WO 2004/006688A1) of record in view of Davenport et al. (B) (US 2003/0194478A1) of record.

Davenport (A) teaches a method for moderating the behavior of a healthy dog comprising feeding a high quality diet containing a high amount (behavior moderating amount) of DHA and EPA (omega-3 fatty acids). (page 4, lines 5-8, page 8, lines 3-17, page 10, line 3). Davenport teaches the emotional reactivity and behavior of dogs is

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thought to be influenced by the specific content of their food. (page 2, 2nd paragraph). Davenport teaches the diet can be formulated as to be dry (e.g. in kibble or other form) (dry matter). (page 6, last full-paragraph). Davenport teaches that the high quality diet comprises at least about 0.15% DHA and at least about 0.15%EPA, all by weight of the diet. (claim 10). Davenport teaches the diet can be formulated up to 0.25% of DHA, and up to about 0.25% of EPA. (page 8, 1st and 2nd full paragraph). Davenport teaches that the age the tested dogs were older than 6 month. (page 10, lines 10-12).

Davenport (A) does not teach the administration of a formulation comprising at least about 0.5% DHA and EPA for influencing behavior in the animal, and does not teach the specified age of the dog set forth in claims 3, 4 and 7.

Davenport et al.(B) teach a method for increasing the hunt performance including perception, responsiveness, alertness, target detection of a hunting mammal (dogs or cat) which includes orally administering to the mammal an effective amount of a diet comprising unsaturated fatty acid EPA, DHA or both in a total amount of the diet greater than about 0.20 weight percent. (abstract, [0065]). Davenport et al. (B) teaches that the composition has a total amount of unsaturated fatty acids EPA, DPA and DHA of about 0.5 to about 0.55 weight percent. (page 9, claim 47).

It would have been obvious to one of ordinary skill in the art to modify the composition of Davenport (A) comprising at least about 0.15% DHA and at least about 0.15% EPA, up to 0.25% DHA and 0.25% of EPA (total of 0.5%) for influencing behavior in dog because (A) teaches the composition of EPA and DHA are useful for influencing behavior in dog at least about 0.15% each but can be employed up to 0.25% weight

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each; and because Davenport et al. (B) teach that the unsaturated fatty acids for the behavior modification use can be employed in the total amount of about 0.5 to 0.55 weight percent is safe and effective. There is an expectation of successfully influencing behavior in dogs with the claimed total amount of omega-3 fatty acids (DHA and EPA) because the each of the maximum amount of DHA and EPA by Davenport (A) in a single composition is not only employed for the same purpose but it is safe and effective as taught by Davenport (B). One would have been motivated to employ maximum amount of each of DHA and EPA taught by Davenport (A) in a single composition with a reasonable expectation of success in influencing behavior of an animal in order to achieve a highly unsaturated fatty acids that is safe and effective for the animals as taught by Davenport (A) and (B). With regard to the specified range of the ages set forth in claims 3, 4 and 7, such is obvious because Davenport teach that the dogs tested were over 6 month of age which would generally encompass the ages ranges set forth in the claims. For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.

None of the claims are allowed.

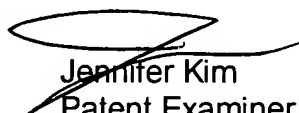
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax

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phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jennifer Kim
Patent Examiner
Art Unit 1617

Jmk
December 26, 2006